

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEM
MAR 13 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of Worldcom, Inc. and)
MCI Communications Corporation for)
Transfer of Control of MCI Communications)
Corporation to Worldcom, Inc.)
_____)

CC Docket No. 97-211

TO THE COMMISSION

PETITION TO DENY

THE GREENLINING INSTITUTE
Robert Gnaizda
Itzel D. Berrio
785 Market Street, 3rd Floor
San Francisco, CA 94103
415/284-7200

LATINO ISSUES FORUM
Susan E. Brown
785 Market Street, 3rd Floor
San Francisco, CA 94103
415/284-7220

Date: March 13, 1998

Attorneys for INTERVENORS

No. of Copies rec'd 12
List ABCDE

TABLE OF CONTENTS

SUMMARY	1
ARGUMENT	2
I. Federal Intervention In the Merger Is Necessary to Protect the Public Interest	2
II. Combination of the Second and Fourth Largest Providers of Long Distance Service Would be Anticompetitive	3
III. This Proposed Merger Would Give Worldcom an Anticompetitive Hold On the Backbone of the Internet	3
IV. This Proposed Merger Would Neither Preserve Nor Enhance Universal Service	4
V. The Merged Entity Cannot Serve The Public Interest If Minorities And Women Are Excluded From Control Positions	4
VI. A Company With A Poor Charitable Contribution Record Cannot Serve the Public Interest	6
VII. The Merger Application Is Silent On The Issue Of Consumer Protection	6
RELIEF REQUESTED	7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

PETITION TO DENY

On behalf of the Greenlining Institute, Latino Issues Forum, American G.I. Forum, Asian Business Association, Black Business Association, California Coalition of Hispanic Organizations, Chicano Federation, Latin Business Association, Minority Business Council of Orange County, San Francisco Black Chamber of Commerce, and Southeast Asian Community Center (collectively "Greenlining"), this is a petition to deny the Application of Worldcom, Inc. ("Worldcom") and MCI Communications Corporation ("MCI") for transfer of control of MCI to Worldcom. Greenlining represents communities of color, low-income communities, and other vulnerable populations located throughout California.

Greenlining contends that this merger will have a negative effect on America's eighty million ethnic minorities, including the seventeen million people of color residing in California, California's 900,000 minority-owned businesses, and the low-income and underserved communities throughout California which constitute MCI/Worldcom's largest potential domestic market in California.

SUMMARY

As presented to the Commission and the public, the Worldcom/MCI merger is not good for America. It is unlikely to comply with America's communications, antitrust and equal opportunity laws. Furthermore, it is not in the public interest. This merger is likely to be detrimental to low-income families and individuals, people of color, recent immigrants, and other vulnerable communities. In this Petition to Deny, Greenlining asks the Commission to require a more thorough statement of the companies' plans for their merger, allow discovery in this case with regard to information relating to how the merger will impact the public in general and

1 vulnerable communities in particular, allow public comment on these plans, designate the
2
3 application for hearing and deny the application.
4

5 6 ARGUMENT

7 8 **I. Federal Intervention In the Merger Is Necessary to Protect the Public Interest**

9
10 When companies propose to merge, they would save the Commission and the public
11
12 considerable time and expense if they would lay all of their plans openly on the table. For
13
14 example, the Commission's analysis of the Bell Atlantic/NYNEX merger "would have been
15
16 greatly assisted by a fuller description of (Bell Atlantic's) actual plans, even if Bell Atlantic
17
18 believe those plans were irrelevant." NYNEX Corporation and Bell Atlantic Corporation
19
20 (MO&O), FCC 97-286 (released August 14, 1997) ("Bell Atlantic/NYNEX Order") at 113 ¶243.
21
22

23
24 The same can be said of the Worldcom and MCI, who have truly filed a stealth application.
25
26 The application stands mute on virtually all of the major public interest issues attendant to
27
28 mergers of this nature and size, including the potential for redlining and discrimination,
29
30 consumer protection issues, and the corporation's diversity and charitable contribution records.
31
32 Commission review is necessary to protect the public interest because the companies have not
33
34 manifested any interest in addressing these issues voluntarily.¹ The merger application does not
35
36 contain a word addressing how the merged company will impact low-income individuals and
37
38 families, effect people of color, or eliminate discrimination. The Commission must investigate
39
40 the merger proposal thoroughly in order to fulfill the Telecommunications Act's requirement that
41
42 the FCC make an affirmative determination that approval of such mergers would serve the public
43
44 interest.
45
46
47
48
49
50

51
52

¹ On February 19, 1998, to afford the companies an early opportunity to explain their plans and possibly adjust or modify them, Greenlining wrote to
53 the attorneys of both companies, seeking basic information from the companies regarding the merger as it would impact low-income individuals and
54

1 **II. Combination of the Second and Fourth Largest Providers of Long Distance Service**
2 **Would be Anticompetitive**

3
4 In addition to the anticompetitive domination the merged company will have of the internet
5
6 backbone product market (see Section III. below), and Worldcom's disdain for residential
7
8 customers, particularly low-income customers, it must be noted that the Applicants propose to
9
10 combine the second and forth most powerful competitors in the long distance market – an act
11
12 which is presumptively anticompetitive.
13

14
15 MCI openly and unabashedly fights to keep other potential competitors out of the long-
16
17 distance business, which will help only to maintain the anticompetitive market power that its
18
19 proposed combination with Worldcom would only exacerbate.² Add to this *per se*
20
21 anticompetitive effect (combining #2 and #4 in the long distance product market), the analysis
22
23 that MCI and Worldcom both “cherry pick” only the most lucrative customers for long distance
24
25 service,³ and the adverse effect, particular on low-income residential customers, is accentuated.
26
27
28
29

30
31 **III. This Proposed Merger Would Give The Merged Company an Anticompetitive Hold**
32 **On the Backbone of the Internet**

33
34 Informed sources estimate that if this proposed merger were approved, “50-55% of backbone
35
36 Internet traffic would pass over facilities owned by . . . Worldcom.”⁴ This is an issue which
37
38 effects not only competitor internet service providers, but consumers as well – in particular, low-
39
40 income consumers. This potential harm to consumers is obvious, and legally cognizable.⁵ This
41
42 increasingly anticompetitive hold of the internet backbone fails to preserve and enhance
43
44
45
46

47 families, people of color and other vulnerable communities. MCI expressly refused to address any of the issues Greenlining raised. Worldcom did not
48 respond at all, even to acknowledge the receipt of the correspondence.

49 ² See, e.g., Jeannine Aversa, “MCI Challenges Ameritech Testing of Long-Distance Service,” Associated Press. Aug. 11, 1997, 18:52 EST; MCI
50 statement on PRNewswire of December 24, 1997, 13:04 EST, applauding BellSouth being kept out of the long distance service market in South
51 Carolina.

52 ³ See, e.g., “Cherries delivered to 'Cherry Picking' Long Distance Companies,” Washington Telecom Newswire, November 10, 1997.

53 ⁴ See Communications Week International of November 24, 1997, “Internet Probe”, quoting Michael Kleeman of the Boston Consulting Group; accord,
54 Wilke, Gruley and Lipin in the Wall Street Journal: the new company would control more than half of Internet traffic; regulators are “going to have to
educate (themselves) on the Internet business. and that's going to take time.” said Phillip Verveer, a Washington attorney.

1 universal service, as required by one of the essential prongs of the FCC's current public interest
2
3 test. (The merger's deleterious impact on universal service is further discussed in Section IV.
4
5 below.)
6

7 8 **IV. This Proposed Merger Would Neither Preserve Nor Enhance Universal Service** 9

10 Both for the reasons set forth immediately above (Worldcom's increasingly anticompetitive
11
12 hold on the internet backbone), and otherwise, this proposal does not pass one of the essential
13
14 prongs of the FCC's current public interest test: that proposed transfers of licenses and mergers
15
16 such as this "preserv[e] and enhanc[e] universal service."⁶
17
18

19
20 There is a vicious circle, and a "double-whammy" at work here. The claimed benefits of the
21
22 merger – including bundled services and "one stop shopping" – will be targeted to more affluent
23
24 customers, because they are more likely to be on the internet already. Add to the vicious circle
25
26 the fact that Worldcom is blatantly more focused on business customers than residential
27
28 consumers, and it becomes clear that this merger (1) would bring few benefits to residential
29
30 consumers, and (2) would bring no benefits to the residents of low-income communities of
31
32 color⁷ that are a major focus of universal service.
33
34
35

36 37 **V. The Merged Entity Cannot Serve The Public Interest If Minorities And Women Are** 38 39 **Excluded From Control Positions**

40 An entity seeking to become one of the nation's dominant telecommunications ventures
41
42 cannot possibly serve the nondiscrimination and diversity-promoting goals of Section 151 of the
43
44
45
46
47

48 ⁵ See, e.g., Reiter v. Sonotone Corp., 441 U.S. 330 (1979).
49

50 ⁶ Significantly, on this issue, the New York Times' ran an analysis piece on November 11, 1997, entitled "The Battle for MCI: The Consumers." The
51 piece reported that "[t]he first group of households likely to be offered one-stop shopping for bundled phone, Internet and other services will be the 16
52 million affluent households with income of \$75,000 or more."

53 ⁷ Targeting and/or excluding on the explicit basis of income (for example, in the bundled services touted as a countervailing benefit in the Application)
54 may run afoul of the "effects" or disparate impact test applicable to prevent seemingly permissible business practices from having unnecessary
discriminatory effects in fact. The test has been successfully applied in the fields of employment, housing and consumer credit for years; it is applicable
to the various telecommunications product markets at issue here.

1 Telecommunications Act unless it includes people of color or women on its board or in its senior
2
3 management.
4

5
6 According to the 1996 MCI Annual Report, as of March, 1997 MCI's board consists of
7
8 eleven White men, two White women, and one Black man, an outside director. According to the
9
10 1996 Worldcom Annual Report, as of March, 1997, Worldcom's Board consisted of fifteen
11
12 White men. Worldcom appears to be the only major telecommunications company which has
13
14 not yet integrated its board of directors by either race or gender. Furthermore, none of MCI's ten
15
16 principal executive officers or Worldcom's four principal executive officers, as identified in the
17
18 MCI or Worldcom 1996 annual reports, is a person of color or a woman.
19
20
21

22
23 The officers and directors of MCI Worldcom are to be designated by Worldcom.⁸ Exhibit
24
25 5.1(a) to the Merger Agreement states that the MCI/Worldcom Board "shall consist of fifteen
26
27 members, eight of whom shall be designated by MCI from among the directors of MCI and two
28
29 of whom shall be directors designated by Worldcom from among pending acquisitions of
30
31 Worldcom provided that the persons designated by each party shall be reasonably acceptable to
32
33 the other party." Thus, the Merger Agreement offers no assurance that the MCI Worldcom
34
35 Board will include any people of color or women at all.
36
37
38

39
40 A company this essential to the nation's telecommunications commerce cannot possibly
41
42 operate in the public interest with a board and senior staff composed entirely of White males.
43
44
45
46
47
48
49
50
51
52
53

54

⁸ See Merger Agreement, §1.7 (Officers and Directors of Surviving Corporation).

1 **VI. A Company With A Poor Charitable Contribution Record Cannot Serve the Public**
2 **Interest**

3
4 Worldcom's record of charitable contributions is very poor. In fact, despite the fact that
5
6 nearly 40% of Mississippi's population is comprised of people of color,⁹ the company has a
7
8 record of inadequate and discriminatory distribution of philanthropic dollars to low-income
9
10 communities and to communities of color. A company which disregards such a significant
11
12 portion of its population and clearly undervalues its consumers cannot serve the public
13
14 effectively. For this reason, the merger application should be denied. At the very least, the
15
16 Commission should allow a thorough investigation of the company's charitable contribution
17
18 record so that a more accurate record and complete analysis of each company's philanthropic
19
20 giving patterns can be obtained.
21
22
23
24

25
26 **VII. The Merger Application Is Silent On The Issue Of Consumer Protection**
27

28 Despite the fact that if this merger occurs, users of potentially 50-55% of the internet
29
30 backbone and most long distance service users throughout the country will become consumers of
31
32 Worldcom-MCI, in its application neither company makes any mention of consumer protection
33
34 issues. A company with this much control of the nation's telecommunications cannot operate in
35
36 the public interest where it shows little to no concern for its consumers.
37
38
39

40 Furthermore, the weak and questionable financial underpinnings to this merger will likely
41
42 force Worldcom to use discriminatory and/or fraudulent marketing and sales practices,
43
44 particularly among vulnerable communities. A company with no express concern for consumer
45
46 protection, much less a company which exercises unscrupulous and/or fraudulent marketing and
47
48 sales practices, cannot serve the public interest.
49
50
51
52

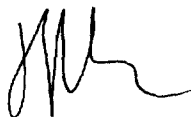
53
54

 ⁹ 1990 U.S. Census Data.

1
2
3 **RELIEF REQUESTED**
4

5 The Commission should investigate the merger thoroughly, allow participants limited
6 discovery, and offer the public a reasonable opportunity to comment on the fruits of its
7 investigation. Thereupon it should designate the merger application for hearing and deny the
8 application.
9
10
11
12

13 Respectfully submitted,
14

15 
16

17 Robert Gnaizda
18 Policy Director and General Counsel
19 The Greenlining Institute
20 785 Market Street, Third Floor
21 San Francisco, CA 94103
22 415/284-7200
23
24
25
26

27 
28

29 Susan E. Brown
30 Legal Counsel
31 Latino Issues Forum
32 785 Market Street, Third Floor
33 San Francisco, CA 94103
34 415/284-7220
35
36
37

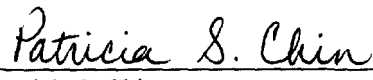
38 March 13, 1998
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

CERTIFICATE OF SERVICE

I, the undersigned, hereby declare:

1. I am citizen of the United States of America over the age of eighteen years. My business address is 785 Market Street, Third Floor, San Francisco, CA 94103. I am not a party to this action.
2. On March 13, 1998, I caused a true and correct copy of this documents, Petition to Deny, CC Docket No. 97-211, to be delivered to each FCC Commissioner and the participants in this proceeding (*on the attached service list*) by service by messenger, or by United States First Class Mail, postage prepaid, in an envelope containing a true copy of this document addressed to each of them.
3. I declare under penalty of perjury that the foregoing is true and correct.

Dated in San Francisco, California this 13 day of March, 1998.



Patricia S. Chin
Declarant

SERVICE LIST

Hon. William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Eighth Floor
Washington, DC 20554

Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, NW, Eighth Floor
Washington, DC 20554

Hon. Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, NW, Eighth Floor
Washington, DC 20554

Hon. Michael Powell
Commissioner
Federal Communications Commission
1919 M Street, NW, Eighth Floor
Washington, DC 20554

Hon. Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, NW, Eighth Floor
Washington, DC 20554

Andrew D. Lipman
Jean L. Kiddoo
Swidler & Berlin, Chtd.
3000 K. Street, NW, #300
Washington, DC 20007

Catherine R. Sloan
Robert S. Koppel
Worldcom, Inc.
1120 Connecticut Ave., NW
Washington, DC 20036

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI Communications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006